

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PATRICIA COLE-TINDALL, in her official)	
capacity as the King County Sheriff; and KING)	No. 2:24-cv-00325-RAJ
COUNTY, a home rule charter county,)	
)	SECOND DECLARATION OF ANN
Plaintiff,)	SUMMERS IN SUPPORT OF
)	MOTION FOR PRELIMINARY
vs.)	INJUNCTION
)	
CITY OF BURIEN, a municipal corporation,)	
)	
Defendant.)	
)	

I, Ann Summers, declare as follows:

1. I am over eighteen years of age. I have personal knowledge of the facts contained in this declaration and am otherwise competent to testify to the matters in this declaration. I am a Senior Deputy Prosecuting Attorney for King County and represent Plaintiffs in this matter.
2. I assisted in the preparation of the Complaint filed by Plaintiffs in this matter. The Complaint was filed on Monday, March 11, 2024. Dkt. 1.
3. The City of Burien website contains a page for the Burien City Clerk located at https://www.burienwa.gov/city_hall/departments/city_clerk . That page states, “At this time the City Clerk’s Office is available to accept service to the city by appointment only. Please email cityclerk@burienwa.gov to coordinate a time.”

1 4. On March 11, 2024, at 3:31 p.m., I emailed copies of the complaint and
2 incorporated exhibits, summons and civil cover sheet filed in this case to the Burien City Attorney,
3 Garmon Newsom at garmonn@burienwa.gov. I advised him that we would undertake process of
4 service through the city clerk's office unless he indicated that Burien would waive service. I
5 received no response. Exhibit A is a true and correct copy of that email.

6 5. The clerk of this Court issued the summons in this case on Wednesday, March 13,
7 2024, (Dkt. 6) and at 4:07 p.m., Plaintiffs received notice through PACER that Magistrate Judge
8 David Christel was assigned the case.

9 6. On Thursday, March 14, 2024, I filed the pending motion for preliminary
10 injunction, with supporting declarations and a proposed order. Dkts. 7-11.

11 7. On Thursday, March 14, 2024, I emailed copies of the motion for preliminary
12 injunction and supporting declarations to City Attorney Newsom at garmonn@burienwa.gov.
13 Exhibit B is a true and correct copy of that email.

14 8. On Thursday, March 14, 2024, Burien Police Chief Theodore Boe delivered to the
15 Burien City Clerk, Heather Dumlao, copies of the complaint, summons, civil cover sheet, motion
16 for preliminary injunction and proposed order and supporting declarations filed in this case.

17 9. On Friday, March 15, 2024, the Minute Order Reassigning the Case to Judge
18 Richard Jones was entered in this case. Dkt. 13.

19 10. On Friday, March 15, 2024, the Standing Order For Civil Cases Assigned to Judge
20 Richard A. Jones was entered in this case. Dkt. 14. The Standing Order directed Plaintiffs to
21 immediately serve the Standing Order along with the summons and complaint on all Defendants.

22 11. Pursuant to the Standing Order, on Monday, March 18, 2024, Chief Boe delivered
23 to the office of the Burien Deputy City Clerk a copy of the complaint, summons and Standing

1 Order.

2 12. On Wednesday, March 20, 2024, I received an email from Dan Brown of Williams
3 Kastner that he and Sean Leake, also of Williams Kastner, had filed a notice of appearance on
4 behalf of Burien. Mr. Brown asserted that the motion for preliminary injunction filed on March 14
5 was filed in contravention to the Standing Order entered on March 15. Mr. Brown asked Plaintiffs
6 to strike the motion. See Dkt. 21, Dec. of Brown, Ex. E, at 21.

7 13. As of Wednesday, March 20, 2024, I was advised and confirmed that Williams
8 Kastner was currently representing King County in another matter. On that day, the RPC 1.7(a)(1)
9 conflict of interest issue was raised with Mr. Brown through an email sent by my co-counsel Erin
10 Overbey.

11 14. I received no communication from Mr. Brown, Mr. Newsom or Mr. Leake between
12 Wednesday, March 20 and Monday, March 25, 2024.

13 15. On Monday, March 25, 2024, I received an email from Mr. Brown attaching a letter
14 dated August 8, 2023, in regard to King County's retention of Williams Kastner in another matter.
15 Dkt. 21, Dec. of Brown, Ex. G, at 43-44. The stated intent of the letter was to confirm King
16 County's consent to waive any actual or potential conflicts in regard to the matter of *Sceals v. King*
17 *County, et al.* The letter contained the following sentence: "King County agrees that, with those
18 exceptions, we are free to represent other clients, including clients whose interests may conflict
19 with King County in matters unrelated to our work for King County." Mr. Brown asserted that by
20 signing this letter King County had preemptively waived any and all potential conflicts of interest
21 in any and all future matters.

22 16. On Monday, March 25, 2024, I responded to Mr. Brown's email and noted King
23 County's disagreement as to the scope of the waiver of future conflicts in the August 8, 2023 letter.

1 Dkt. 21, Dec. of Brown, Ex. H, at 46-47. I advised Mr. Brown that King County did not wish to
2 delay the motion for preliminary injunction and therefore agreed to waive the conflict of interest
3 in this matter. I also clarified that the case had been assigned to Judge Christel and not Judge Jones
4 on March 14, and thus Judge Jones' Standing Order, which was entered on March 15, was not in
5 effect at the time the motion for preliminary injunction was filed on March 14. I offered eight
6 separate times between March 25 and 27 to meet and confer.

7 17. I received no further communication from Mr. Brown, Mr. Leake or Mr. Newsom
8 until Thursday, March 28, when Mr. Brown emailed a summons and complaint filed by Burien
9 against King County in Pierce County Superior Court.

10 18. On March 28, 2024, Burien filed their motion to strike and/or motion to continue
11 the motion for preliminary injunction in this matter without making any attempt to meet and confer
12 with myself or co-counsel. Dkt. 20 and 21.

13 19. Attached hereto as Exhibit C is a true and correct copy of an email sent to Sheriff
14 Cole-Tindall from Burien Mayor Kevin Schilling on March 8, 2024.

15 I declare under penalty of perjury under the laws of the United States of America and the
16 State of Washington that the foregoing is true and correct.

17 Signed this 5th day of April, 2024, at Seattle, Washington.

18 

19 ANN M. SUMMERS

Exhibit A

From: [Summers, Ann](#)
To: garmonn@burienwa.gov
Cc: [Overbey, Erin](#); [Munoz-Cintron, Rafael](#)
Subject: Lawsuit
Date: Monday, March 11, 2024 3:30:00 PM
Attachments: [001 DKT 2024-03-11 COM Complaint.pdf](#)
[004 DKT 2024-03-11 PLD Exhibit F to COM.pdf](#)
[003 DKT 2024-03-11 SUM Summons.pdf](#)
[002 DKT 2024-03-11 CIS Civil Cover Sheet.pdf](#)
[image001.png](#)

Mr. Newsom,

Good afternoon. Ms. Overbey and I represent Sheriff Cole-Tindall and King County. Please find attached the complaint with exhibits, summons and civil cover sheet we filed this afternoon in the Western District of Washington. We will undertake the process of serving Burien through the city clerk's office, unless you indicate that Burien will waive service pursuant to FRCP 4. If so, please let me know and we will provide the waiver of service form. Please let me know if you have any questions.

Thank you,

Ann Summers



ANN SUMMERS (she/her)
SENIOR DEPUTY PROSECUTING ATTORNEY, CIVIL DIVISION, GOVERNMENT AFFAIRS AND
LITIGATION
King County Prosecuting Attorney's Office

701 Fifth Avenue, Suite 600, Seattle, WA 98104
O: (206) 477-1909
E: ann.summers@kingcounty.gov

Exhibit B

From: [Summers, Ann](#)
To: GarmonN@BurienWA.gov
Cc: [Overbey, Erin](#); [Munoz-Cintron, Rafael](#)
Subject: King County v. City of Burien, No. 2:24-cv-00325-DWC
Date: Thursday, March 14, 2024 3:25:00 PM
Attachments: [007 DKT 2024-03-14 MTN for Prel Inj.pdf](#)
[010 DKT 2024-03-14 DEC of Cole-Tindall.pdf](#)
[009 DKT 2024-03-14 DEC of Eisinger.pdf](#)
[008 DKT 2024-03-13 DEC of Boe.pdf](#)
[011 DKT 2024-03-14 DEC of Summers.pdf](#)
[image001.png](#)

Mr. Newsom - Please find attached a motion for a preliminary injunction and supporting declarations filed today in the above-captioned case. The complaint and summons and these documents were served on the Burien City Clerk this afternoon.



ANN SUMMERS (she/her)
SENIOR DEPUTY PROSECUTING ATTORNEY, CIVIL DIVISION, GOVERNMENT AFFAIRS AND
LITIGATION
King County Prosecuting Attorney's Office

701 Fifth Avenue, Suite 600, Seattle, WA 98104
O: (206) 477-1909
E: ann.summers@kingcounty.gov

Exhibit C

From: Kevin Schilling <KevinS@burienwa.gov>
Sent: Friday, March 8, 2024 4:07 PM
To: Cole-Tindall, Patti <Patti.Cole-Tindall@kingcounty.gov>; Adolfo Bailon <AdolfoB@burienwa.gov>
Cc: Eric Christensen <ericc@burienwa.gov>; Laura Philpot <laura.philpot@maplevalleywa.gov>; Garmon Newsom II <GarmonN@burienwa.gov>; Boe, Theodore <Theodore.Boe@kingcounty.gov>
Subject: Re: Orders to BPD Personnel

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Sheriff Cole-Tindall,

Who in King County is reviewing and making a determination?

Does the Sheriff's office have the ability or authority to determine what is and isn't constitutional? I thought that's for judges to decide.

Hasn't the Sheriff's department been enforcing the ordinance prior to this? There's no substantial change, this is just an amendment.

So now, just to be clear, will the contracted Sheriff's deputies NOT be enforcing any element of the city's tent ordinance?

Thank you,

Mayor Kevin Schilling

From: Cole-Tindall, Patti <Patti.Cole-Tindall@kingcounty.gov>
Sent: Friday, March 8, 2024 6:57:07 PM
To: Adolfo Bailon <AdolfoB@burienwa.gov>
Cc: Eric Christensen <ericc@burienwa.gov>; Kevin Schilling <KevinS@burienwa.gov>; Laura Philpot <laura.philpot@maplevalleywa.gov>; Garmon Newsom II <GarmonN@burienwa.gov>; Theodore Boe (Burien PD) <Theodore.Boe@kingcounty.gov>
Subject: RE: Orders to BPD Personnel

CAUTION: This email originated from outside of the City of Burien. Do not click links or open attachments unless you recognize the sender and have verified the contents are safe.

Adolfo,

King County is reviewing the homeless camping ordinance that was passed by Burien City Council this week to determine how to manage the next steps from a law enforcement perspective. We have substantial concerns that Burien's new ordinance violates binding federal case law. Because Burien adopted its ordinance on a highly accelerated timeline, there was no opportunity to address the serious constitutional issues raised by this ordinance. At this time, the King County Sheriff's office will not enforce on the public camping portion of Burien Municipal Code (BMC 9.85.150), until the

constitutionality of the ordinance is resolved. All criminal code violations will continue to be enforced. We expect to have completed an analysis of the legislation early next week and will provide an update to Burien at that time.

Sheriff Cole-Tindall

-----Original Message-----

From: Adolfo Bailon <AdolfoB@burienwa.gov>

Sent: Friday, March 8, 2024 3:03 PM

To: Cole-Tindall, Patti <Patti.Cole-Tindall@kingcounty.gov>

Cc: Eric Christensen <ericc@burienwa.gov>; Kevin Schilling <KevinS@burienwa.gov>; Laura Philpot <laura.philpot@maplevalleywa.gov>; Garmon Newsom II <GarmonN@burienwa.gov>; Boe, Theodore <Theodore.Boe@kingcounty.gov>

Subject: Orders to BPD Personnel

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Sheriff Cole-Tindall,

I learned recently of the directive issued by you to the Burien Police Department that places KCSO in breach of the ILA and its contractual obligation to the City of Burien. Please accept this email as notice of my intent to address this breach of the ILA through the Oversight Committee. Notice of your decision and KCSO's violation of the ILA has already been sent to the Chair of the Oversight Committee for review and action.

Also, please note that my team and I will now commence to explore the process of withhold payment for services due to KCSO's egregious violation of a longstanding contract with the City of Burien.

Sincerely,

Adolfo Bailon
City Manager